

01-010

ELECTIONS: THE ELECTION – SPECIAL ELECTIONS.

No authority for Colonial Heights City Council to call for advisory referendum regarding establishment of recreation center in city.

The Honorable M. Kirkland Cox
Member, House of Delegates
January 26, 2001

You ask whether the City Council of the City of Colonial Heights may call for an advisory referendum concerning the establishment of a recreation center in Colonial Heights.

Section 24.2-684 of the *Code of Virginia* provides, in part:

Notwithstanding any other provision of any law or charter to the contrary, the provisions of this section shall govern all referenda.

No referendum shall be placed on the ballot *unless specifically authorized by statute or by charter*. [Emphasis added.]

When a statute begins with the phrase "notwithstanding any other provision of law," it is presumed that the General Assembly intended to override any potential conflicts with earlier legislation.¹ In addition, the use of the word "shall" in a statute ordinarily implies that its provisions are mandatory.²

Prior opinions of the Attorney General interpreting § 24.2-684 consistently conclude that, absent specific statutory authority, a referendum may not be held to take the sense of the people on a local issue.³ Section 4.12 of the Colonial Heights Charter of 1960 provides the only authority for the submission of propositions to the city's qualified voters:

The council shall have authority, by resolution, to submit to the qualified voters of the city for an advisory referendum thereon, any proposed ordinance or amendment to the city charter^[4]

Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.⁵ In addition, the mention of one thing in a statute implies the exclusion of another.⁶ Finally, the Supreme Court of Virginia has stated that "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁷

The city charter authorizes the council to call for an advisory referendum only for proposed ordinances and amendments to the charter. I must, therefore, conclude that the City Council of the City of Colonial Heights does not have the authority to call for an advisory referendum regarding the establishment of a recreation center in Colonial Heights.

¹Op. Va. Att’y Gen.: 1996 at 197, 198; 1987-1988 at 1, 2.

²See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 282 (1959) (noting that "shall" imposes imperative duty); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that "shall" generally indicates procedures are intended to be mandatory, imperative or limited); Op. Va. Att’y Gen.: 1997 at 16, 17; 1996 at 20, 21; 1991 at 126, 126, and opinions cited therein; *id.* at 127, 129, and opinions cited therein.

³See Op. Va. Att’y Gen.: 1987-1988 at 359, 360; 1983-1984 at 149, 150; 1978-1979 at 72, 73; 1976-1977 at 73 (construing predecessor § 24.1-165).

⁴1960 Va. Acts ch. 213, at 220, 229.

⁵See 2A Norman J. Singer, *Sutherland Statutory Construction* § 47:23 (West 6th ed. 2000) ("*Expressio unius est exclusio alterius*").

⁶See *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992); *Christiansburg v. Montgomery County*, 216 Va. 654, 658, 222 S.E.2d 513, 516 (1976); see also 1992 Op. Va. Att’y Gen. 145, 146, and opinions cited therein.

⁷*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

[Back to January 2001 Index](#)